

PREFACE: Offshore banks in Asia often help their customers avoid CRS reporting by advising more than 50% portfolio of an entity be in non-interest bearing cash, and that the bulk of income of the income NOT be passive income, eg. consulting fees, rent, etc. Then this entity will be an Active NFE based on the premise that the cash is not held for the production of passive income, but to be used for future business expansion. The OECD CRS FAQ update of May 2024 now states Money is not a Financial Asset, further bolstering the argument that cash in an Active NFE is not held to generate passive income.

However, the accumulation of cash from business

profits to over 50% of the entity's assets, threatens to

convert these to reportable Passive NFEs... until the

dimwitted f*ckwits in Paris updated the OECD CRS-

related FAQ to confirm money is not a financial asset.

• CRS due diligence on an entity, is to determine if an entity is a Financial Institution. If it is not, then its a Non Financial Entity (NFE) Next is to determine if the entity is an Active NFE, which is "praise the lord" not a reportable entity. OECD did not want the world flooded with million sof genuine

businesses like restaurants, doctors, chip plants. • But the OECD should have excluded entities located in non-tax or low-tax jurisdictions like the EU saving stax directive did. But that's a debate for another day.

Note that if money is not a Financial Asset, then an entity holding more than 50% money will never be a reporting Professional Managed Investment Entity, because it has an explicit 50% Financial Asset test.

The Definition of Active NFE

and assets.

CRS Commentary page 195 par 121 - 13 NFE, Passive NFE and Active NFE

• The term "NFE" is an acronym for Non-Financial Entity and it means, any Entity that is not a Financial Institution. An NFE can be either a Passive NFE or an Active NFE. Any NFE can be an Active NFE, provided that it meets any of the criteria listed in subparagraph D(9). In summary, those criteria refer to active NFEs by reason of income

• This article ignores the other types of Active NFEs because they do not concern the OECD's latest "money is not a Financial asset" balls-up • The criterion to qualify for the Active NFE status for "active NFEs by reason of income and assets" is as follows:

- Less than 50% of the NFE's gross income is passive income and

- Less than 50% of the assets held by the NFE are assets that produce or are held for the production of passive income.

• In determining what is meant by "passive income", reference must be made to each jurisdiction's particular rules. Passive income would generally be consists of dividends; interest; rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE; annuities; the excess of gains over losses from the sale or exchange of **!!Financial Assets!!** that gives rise to the passive income described previously; the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any!! Financial Assets!!; the excess of foreign currency gains over foreign currency losses; net income from swaps; or amounts received under Cash Value Insurance Contracts

The OECD cock-up statement is that "money is not a Financial Asset" can be used to justify that money/cash in the entity is not held for the production of passive income which is generally derived from Financial Assets

So where did the OECD f*ck-up in the May 2024 update to the CRS FAQ?

OECD hard art work on the latest CRS-related FAQ May 2024

• OECD page 20 Q.13, highlighted in yellow, that the term Financial Assets does not include money.

 Looking at the same page 20 of the CRS FAQ one sees clearly the OECD left arm doesn't know what the right arm is doing. • Q13, "Money is not a Financial Asset" but "Q.2 "Cash is used to generate Passive Income even if it earns no interest".

The OECD Feb 2019 update of the CRS-related FAQ Reportable Account Q1 states cash is held for production of passive income even if it does not earn

interest The key condition to be an Active NFE is less than 50% of the assets held by the NFE are assets that produce or are held for the production of passive income.

• It can easily be argued that most money in an entity doing business or trade is NOT held for the purpose of producing passive income. Voila! an instant loophole. • Earn non-passive income (consulting fees) and ensure the accumulated money (a) does

not generate a cent of interest, and (b) claim with tearful eyes that the cash is to be used for future business, such procure stock for sales, renovate offices, etc. Definitely not to be used to generate passive income.

OECD tries to tackle the cash misunderstanding

 OECD Feb 2019 CRS FAQ update clarified that excess cash is an asset that counts negatively towards the asset test for an Active NFE, even if the cash/money does not produce any interest. • The cash merely has to have the *potential* to generate passive income, even if as it does

not earn interest. OECD CRS FAQ: Passive Non-Financial Entities An Entity is an Active Non-Financial Entity if less than 50% of its income is

passive income and less than 50% of its assets produce or are held for the production of passive income. What if the assets could produce passive income but do not actually produce any income in the period concerned?

The test of whether an asset is held for the production of passive income (Section VIII, D, (9), a) and the associated Commentary) does not require that passive income is actually produced in the period concerned. Instead, the asset must be of the type that produces or could produce passive income. For example, cash should be viewed as producing or being held for the production of passive income (interest) even if it does not actually produce such income.

Unfortunately, the Feb 2019 CRS FAQ update did not knock out "our cash is not held for the production of passive income"

• If an entity is holding more than 50% cash and the cash is associated with the business, for example sales of widgets, or will be used to buy the next shipment of widgets, or is to be used to build premises for consulting, or to be used to renovate property, or may be used for a business loan, then many banks do not include the cash in the "held to

generate passive income" test • The OECD attempts to inform banks that cash is held for the production of passive income even if it does not produce interest, even if it is held for business purposes.

• ... now that the OECD confirms money is not a Financial Asset, so banks will fall back on the "the cash or money is not beingn used to generate Passive income. Thanks OECD for the biggest CRS loophole outside fleeing to the US

HOW IT WORKS: Set up a consulting company with all your offshore cash to be stashed. Generate a few consulting invoices, billed to your pals and family. This tiny amount of consulting fees will be more than 50% income NOT from passive income. The money, is NOT held to generate passive income because wink, wink, the cash is to be spent on building properties, buying competitors, etc. Wink wink

Banks CRS Self Certification forms are still wrong as they're not listening to the OECD FAQ 2019 but will listen to the 2024 update (slimey bastards)

• Many jurisdiction's CRS self entity self-certification forms provide guidance that assets of an Active NFE applies to businesses such as management consulting. • Banks are still fixated only on the income test and ignore the asset test, especially if the cash is to be used for purposes other than producing passive income.

 Offshore banks interpret that cash of a Active NFE has different smell whether it is to be used for business or generate future passive income investments. • The OECD is saying that cash, no matter its purpose, is being held for the purpose of

producing passive income even if it does not produce interest falls on deaf ears. Another example of misinterprettion by a major Swedish bank which states that assets derived from other than passive income count towards it being an Active NFE. Err, excuse me, the source of cash is irrelevant.

• This bank goes more off the rails when its self-certification form guides that "assets of more than 50 % held by the entity which relates to other than passive assets, for instance assets related to the sales of goods and/or services (e.g. hairdresser, restaurant,

consultancy firms, etc.) are Active NFEs • Wow, so the bank opines cash derived from sales of widgets or consulting services is "other than passive assets" and does not count towards the asset being held for the production of passive income.

Wrong, wrong, dickheads

Summary

• The carnival barkers and con artist banks will help clients be categorised as non reportable Active NFEs by agreeing the money held is not to generate passive income. After all OECD agrees money is not a financial asset

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